



**Testimony of Amol Sinha, Esq., State Policy Advocate, Innocence Project
Before the Michigan House of Representatives Committee on Criminal Justice**

September 20, 2016

RE: S.B. 291

On behalf of the Innocence Project, thank you for the opportunity to submit testimony before the House Committee on Criminal Justice. The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals and reforming the criminal justice system to reduce the likelihood of wrongful convictions.

The National Registry of Exonerations at the University of Michigan Law School, which collects data on wrongful convictions, reports that there have been nearly 1,900 exonerations of wrongfully convicted individuals. Every exoneration is an opportunity to review where the system fell short and identify factually supported policies and procedures to minimize the possibility that such errors will impair justice again in the future. Each exoneration is also a time to consider the reentry needs and appropriate compensation due to the victims of those errors who, innocent of the crime accused, were nonetheless stripped of their lives and liberty and forced to endure the misery of prison. Not only have exonerations led to a growing public awareness of the possibility of wrongful conviction, but media accounts accompanying these exonerations have brought into stark relief those issues facing individuals who are attempting to reenter society following protracted incarceration.

This testimony will describe some of the impacts of incarceration on the wrongfully convicted, explain some of their extraordinary needs upon release, and voice our support for S.B. 291, which would provide a mechanism for compensation for Michigan's wrongfully convicted.

Impact of Incarceration on the Wrongfully Convicted

Individuals who reenter society after lengthy prison sentences suffer from significant emotional, physical, and economic needs, and thus require as much support as they can get. According to a report by the Re-entry Policy Council, a bipartisan group comprised of leading elected officials, policymakers and practitioners working in state and local governments, barriers to successful reentry are profound. "Research shows that when people who are released from prison or jail return to the community, their job prospects are generally dim, their chances of finding their own place to live are bleak, and their health is typically poor."¹ Indeed, the National Institute of Justice – the research arm of the Department of Justice – has found that individuals reentering the free world frequently face a lack of adequate education and job skills, limited housing options, substance abuse issues, and mental health issues.²

Scholarship recognizes the well-established emotional and psychological harm wrought by incarceration. Institutionalization reaps profound psychological consequences for the incarcerated, from diminished decision-making capabilities to overwhelming distrust of others to psychological distancing.

¹ *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*. Council of State Governments. Reentry Policy Council. New York: Council of State Governments. January 2005.

² "Offender Reentry," National Institute of Justice, available at <http://www.nij.gov/topics/corrections/reentry/pages/welcome.aspx> (last visited Dec. 10, 2015).

Prison culture demands the rejection of any behavior that might reveal any sort of emotional weakness or intimacy. As a result, the “emotional flatness” that an individual might have adopted in prison in the service of self-protection can be devastating to his social relationships upon release.³ A 2007 New York Times expose tracked the experiences of those wrongfully convicted individuals proven innocent through DNA testing and found that most “have struggled to keep jobs, pay for health care, rebuild family ties and shed the psychological effects of years of questionable or wrongful imprisonment.”⁴

Of course, all of these experiences are only compounded by one’s knowledge that he has been wrongfully convicted and incarcerated.⁵ A 2004 study that examined the psychological effects of wrongful conviction presented a series of clinical findings based on assessments of a sample of wrongfully convicted men. More than 75% of the sample group experienced enduring personality changes, defined as “personality change with characteristics that were not previously seen such as hostile or mistrustful attitude towards the world, social withdrawal, feelings of emptiness or hopelessness, a chronic feeling of threat, and estrangement.”⁶ Two-thirds of those assessed experienced post-traumatic stress disorder, and 90% evidenced some form of a psychiatric disorder.

As one might expect, nearly all of individuals interviewed experience incredible feelings of bitterness and “strong and unresolved feelings of loss.”⁷ These feelings of loss may exist because of grief and mourning over loved ones – often parents – who passed during the course of their incarceration. But, additionally, relationships with family members, including children, are often permanently fractured or destroyed.

The average prison stay of exonerated Innocence Network clients is 14 years. During the course of those years, many of the exonerated missed out on educational and workforce development opportunities. They return to their communities feeling out of step, often unable to meet even basic professional expectations. They are often coping with seriously debilitating insecurities and a persistent feeling of “what might have been” in their professional lives.

In addition to the psychological, emotional, and economic harms, the exonerated typically face serious medical issues upon release. Research shows that the strain and trauma of prison life yields a higher incidence of medical problems for the incarcerated as compared to the general population. For instance, the health of fifty-year-old prisoner has been found, on average, to be similar to that of the average sixty-year-old in the free world.⁸ Of course, prison life also increases exposure to communicable and serious diseases, including HIV and Hepatitis B and C, many of which require long-term and comprehensive healthcare upon release. Medical care provided to prisoners is notoriously poor, exacerbating existing conditions and leaving others untreated. Prison rape is also prevalent, with some experts estimating that more than 40% of the prison population has been victimized.⁹ As such, the medical and mental health problems facing individuals upon release are enormous. Correspondingly, the expenses associated with treatment for such mental and physical health issues, finding suitable housing, and providing for basic sustenance quickly add up.

³ Ibid.

⁴ Roberts, Janet and Elizabeth Stanton. “A Long Road Back After Exoneration, and Justice is Slow to Make Amends.” New York Times, November 25, 2007.

⁵ See Scott, Leslie. “It Never, Ever Ends”: The Psychological Impact of Wrongful Conviction” American University Criminal Law Brief 5, no. 2 (2010):10-22.

⁶ Grounds, A. 2004, Psychological Consequences of Wrongful Conviction and Imprisonment. *Canadian Journal of Criminology and Criminal Justice*. 46(2): 165-183.

⁷ Ibid.

⁸ Joan Petersilia, *When Prisoners Return to Communities: Political, Economic, and Social Consequences*, 65 *Fed. Probation* 3, 5 (2001).

⁹ Christine A. Saum et al., *Sex in Prison: Exploring the Myths and Realities*, 75 *PRISON i.* 413, 414 (1995).

The costs associated with reentering society are extremely onerous. This is particularly true for the wrongly convicted, who, as described above, are often indigent and are experiencing a unique trauma. Tragically, they have paid another's significant debt to society. While it is impossible to give back an innocent person the years he or she lost, it is crucial that we provide a path to try to make them as whole as possible, so that they can develop into the full, productive members of society they were intending to become. S.B. 291 is that pathway.

Litigation is Neither a Suitable Alternative Nor Supplement to Statutory Compensation

Some speculate that the wrongly convicted who live in states that have not passed universal compensation legislation will be able to recover monetary compensation for their wrongful imprisonment through federal civil rights litigation. The most common vehicle for this would be filing a claim under section 1983 of the Civil Rights Act of 1871.¹⁰ However, the burden and costs associated with litigating such a case are extremely high, successes are few and far between, and monetary relief - if any - lacks uniformity.

In order to prevail on a §1983 claim, the wrongly convicted individual must demonstrate that his conviction was the result of official misconduct that directly led to a constitutional violation. First, the wrongly convicted individual has the heavy burden of showing that he or she was the victim of "intentional misconduct." Next, the wrongly convicted must also prove that the misconduct fit into a narrow category of clearly established constitutional standards, and that the standards existed and were widely known by the relevant officials when the person was convicted. However, there are many instances in which actions do not constitute "intentional misconduct" for §1983 purposes, including when:

- Individuals are pressured into providing a false confession;
- Individuals agree to plea agreements (10% of the nation's 344 people who were proven innocent through DNA testing agreed to a plea);
- Individuals are wrongfully convicted based on incentivized testimony, including that of jailhouse informants;
- Mistaken eyewitness identifications result from procedures that are not declared problematic at the time of the criminal investigation.

Additionally, even if a wrongly convicted individual is able to overcome these difficult burdens and present a viable claim, most official actors, including police and prosecutors, are often immune from liability for their misconduct.

Simply put, §1983 claims do not guarantee compensation for three basic reasons:

1. The wrongly convicted plaintiff must not only prove that mistakes were made, but that there was deliberate and/or reckless conduct on the part of officials.
2. In most cases, the doctrines of qualified and absolute immunity shield official actors, such as police, crime lab personnel, and prosecutors from liability for misconduct.
3. Even if there is a successful suit, litigation takes years and there is still no guarantee that the wrongly convicted plaintiff will recover damages. Often, smaller towns are not insured or do not have sufficient funds in their coffers to cover significant claims. Outside insurers that cover municipalities often refuse to cover the most egregious conduct carried out by official actors.

Therefore, the Innocence Project recommends that each state pass a statute that includes a fixed sum

¹⁰ 42 U.S.C. § 1983.

of recovery for each year a wrongfully convicted person spends in prison. Ten years ago, President George W. Bush endorsed Congress's recommended amount of up to \$50,000 per year, with up to an additional \$50,000 for each year spent on death row. All fixed sums included in state compensation laws should, at minimum, meet the federal standard and include a provision that contemplates inflation and makes annual adjustments on that basis. S.B. 291 is an opportunity to bring Michigan in line with the federal standard and national trends.

S.B. 291 is a Conservative Approach to Compensating the Wrongly Convicted

While S.B. 291 will bring the state in line with the federal standard, it is still a rather conservative approach to compensation when compared with other states across the country. Thirty-one states and the District of Columbia all have compensation statutes that vary in terms of eligibility requirements, amount of annual compensation, and lifetime limits. The median compensation for an individual per year served nationwide (including through statutory compensation, private bills, and civil suits) is \$80,215. Many states offer compensation of \$50,000 per year or more, including Colorado and Texas, which offer \$70,000 per year and \$80,000 per year, respectively, in addition to other compensation such as attorneys' fees, healthcare, child support arrears, education costs, and other relief. Many states are currently in the process of revisiting their compensation statutes to increase the annual compensation offered and/or add reentry expenses to the compensation, after recognizing their original compensation amounts were too low. For instance, New Jersey, which offers additional compensation for expenses and damages, recently increased its annual compensation award from \$20,000 per year to \$50,000 per year. There are several states that have compensation statutes, but do not specify yearly awards. The calculations for awards in these states are very fact-specific. Median compensation for wrongly convicted individuals in these states through statute, private bill, or civil suits varies greatly, with ranges up to \$500,000 per year. Therefore, a \$50,000 standard for all individuals who have been wrongly convicted will limit the amount of money the state will have to expend, yet still provide a modest income for those who have had their liberty taken away and their lives shattered.

S.B. 291 also contains an off-set provision to ensure that wrongly convicted individuals are not compensated more than once. Under the bill, any individual who qualifies to receive compensation would be required to subtract any statutory amount received from damages obtained from a civil suit or a settlement that is meant to provide restitution for the wrongful conviction. This should prevent concerns about double-recovery, and will provide the state with uniformity regarding compensation for wrongly convicted individuals.

Conclusion

Stakeholders from all corners of the criminal justice system – from advocates to police to prosecutors – agree that the wrongly convicted deserve to be compensated for their lost years. The victims of criminal justice system error deserve strong support from the government that harmed them – however inadvertently – to return them to where they could have been in life but for their wrongful conviction, and to compensate them for the horror they endured. The Innocence Project urges the House Committee on Criminal Justice to pass S.B. 291 to help the wrongly convicted better transition from prison life to mainstream society. Thank you for your time and consideration.

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